

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE BOARD OF PATENT APPEALS AND INTERFERENCES**

First Named			
Inventor	: Hartmann, Fred O.		
Appln. No.	: 10/612,816		
Filed	: July 2, 2003		Group Art Unit:3652
Title	: HAND-TRUCK APPARATUS		Examiner: Adams,
			Gregory
Docket No.	: G351.12-01		

APPEAL BRIEF

Mail Stop Appeal Brief - Patents
Commissioner For Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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Sir:

INTRODUCTION

This is an appeal from an Office Action mailed on 27 December 2007 in which claims 6, 7, 9, 11, 13-20, 22, 23, 25, 27, 28, 30-32 and 34-38 were finally rejected. A Notice of Appeal to that final Office Action was filed on 27 March 2008. This Appeal Brief, along with the appropriate fee, is believed to be in compliance with 37 CFR 41.37.

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I. REAL PARTY IN INTEREST

Grand Steer Inc. is the real party in interest. Grand Steer Inc., a corporation organized under the laws of the state of Minnesota, and having offices at 322 North Horace Ave, Suite #3, Thief River Falls, MN 56701, has acquired the entire right, title and interest in and to the invention, the application, and any and all patents to be obtained therefrom, as set forth in the Assignment recorded on 15 October 2003 at Reel 14583 and Frame 0446.

II. RELATED APPEALS AND INTERFERENCES

There are no known related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.

III. STATUS OF THE CLAIMS

I. Total number of claims in the application.

Claims in the application are: 1-38.

II. Status of all the claims.

A. Claims cancelled: 1-5, 8, 10, 12, 21, 24, 26, 29 and 33.

B. Claims withdrawn but not cancelled: None.

C. Claims pending: 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27, 28, 30-32
and 34-38.

D. Claims allowed: None.

E. Claims rejected: 4, 6, 7, 9, 11, 13-20, 22, 23, 25, 27, 28, 30-32
and 34-38.

F. Claims Objected to: None.

III. Claims on appeal

Claims on appeal: 14, 20, 22, 27, 28 and 34.

IV. STATUS OF AMENDMENTS

No amendment was filed subsequent to the final rejection.

V. SUMMARY OF CLAIMED SUBJECT MATTER

Independent claim 14 of the present invention defines a hand truck 10 as including a platform 12, (Page 4, lines 7-16; Figures 1, 2 and 4), a channel member 32 fixedly attached to an underside of the platform 12 (Page 5, lines 25-28; Figures 3 and 4) and a locking plate 60 (Page 8, lines 10-11; Figure 5). The hand truck 10 also includes first and second spaced-apart hinge members 42 fixedly attached to the channel member 32, (Page 5, line 28 through page 6, line 2; Page 6, lines 4-6; Figure 5), for connecting a handle 34 connectable to the platform. (Page 5, lines 26-28; Page 6, lines 3-5; Figures 1 and 5). The handle 34 includes a unitary rigid member 38 slidably disposable within the channel member 32 and between the first and second spaced apart hinge members 42, (Page 6, lines 2-5), a tongue portion 56 spaced-apart from and extending parallel to the rigid member 38, (Page 8, lines 6-10; Figures 5 and 6), and stops 44 positioned proximate a distal end of the rigid member 38 (Page 6, lines 5-6; Figure 5). Upon extracting the handle 34 from the channel member 32, stops 44 engage the first and second hinge members 42 and the handle 34 is pivotally positionable between a lowered position and a raised position. (Page 7, lines 16-19). The handle 34 is also lockable to the platform by positioning the handle 34 to dispose the locking plate 60 between the tongue portion 56 and the rigid member 38 (Page 8, lines 12-20; Figure 6).

Independent claim 20 defines the invention as a dual-purpose material handling system 10 having a platform 12 with a plurality of sides for supporting a load placed thereon. (Page 4, lines 7-16; Figures 1, 2 and 4). The handling system 10 also includes a unitary rigid handle 34 positionable between a stowed position and a locked

position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). A channel member 32 fixedly attaches to an underside of the platform 12 for receiving the handle 34. (Page 5, lines 25-28; Figures 3 and 4). Support members 72 extend downward from the platform 12 and are positioned parallel to the channel member 32, wherein the support members 72 and the channel 32 member are positioned to receive a forklift between the channel member 32 and either support member 72 or transversal to the channel member 32 and the support members 72, thereby allowing the material handling system 10 to be transportable by the forklift from any side without the forklift contacting the handle regardless if the handle 34 is in the locked position or the stowed position. (Page 9, lines 18-27 through page 10, lines 1-2; Figure 3). The material handling system further includes a locking mechanism 54. (Page 8, lines 5-11; Figure 5). The locking mechanism 54 includes a locking plate 60, (page 8, lines 10-11; Figure 5)

Claim 22 depends from independent claim 20 and further defines the locking plate of the locking mechanism to be attached to the channel member 32 (Figure 5).

Independent claim 27 defines the present invention as being a hand-truck 10 including a platform 12, (Page 4, lines 6-16; Figures 1, 2 and 4), a channel member 32 fixedly attached to an underside of the platform 12 (Page 5, lines 25-28; Figures 3 and 4), a unitary rigid handle 34 connected to the platform 12, (Page 5, lines 26-28; Page 6, lines 3-5; Figures 1 and 5), wherein the handle 34 is positionable between a slidable position, a pivotable position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). The hand truck 10 also includes a locking plate 60 connected to the platform 12, (Page 8, lines 10-11; Figure 5), and a tongue member 56 extending from and parallel to the handle 34. (Page 8, lines 6-10; Figures 5 and 6). The

handle 34 is positionable to place the locking plate 60 between the tongue member 56 and the handle 34 to rigidly lock the handle the platform 12. (Page 8, lines 15-20; Figures 5 and 6). The handle 34 is also accessible at each position to operatively maneuver the hand-truck.

Independent Claim 28 defines the present invention as being a hand-truck having a platform 12, (Page 4, lines 7-16; Figures 1, 2 and 4), a channel member 32 fixedly attached to an underside of the platform 12 (Page 5, lines 25-28; Figures 3 and 4) and a unitary rigid handle 34 connected to the platform 12, (page 5, lines 26-28; page 6, lines 3-5; Figures 1 and 5), wherein the handle 34 is positionable between a slidable position, a pivotable position and a locked position. (Page 6, lines 18-25; Page 7 lines 16-26; Page 8, lines 12-28; Figures 1, 2 and 4). While in the locked position, the handle 34 is substantially perpendicular and fixedly securable to the platform to prevent pivotal movement of the handle 34. (Page 7, lines 24-28; Figure 1). The hand truck 10 also includes first and second spaced-apart hinge members 42 positioned beyond an edge and fixedly connected to the platform 12, (page 5, line 28 through page 6, line 2; page 6, lines 4-6; Figure 5), wherein the handle slidably disposes between the first and second spaced-apart hinge members 42. (Page 6, lines 4-10; Figure 5). The hand-truck 10 further includes first and second stop members 44 attached proximate to a distal end of the handle 34. (Page 6, lines 5-6; Figure 5). Upon slidably positioning the handle toward the pivotable position, the first stop member engages the first hinge member and the second stop member engages the second hinge member whereby the handle is pivotal about the first and second hinge members. (Page 6, lines 6-10).

Claim 34 depends from independent claim 28 and further defines the invention as including a locking plate 60 connected to the platform 12 and a tongue member 56 spaced-apart from the handle 38. The tongue member 56 is engageable with the locking

plate 60, and upon so doing, the handle 38 fixedly secures to the platform 12 and is in the locked position. (Page 8, lines 12-24; Figures 5 and 6).

VI. GROUNDS OF REJECTION TO BE REVIEWED ON APPEAL

- A. Whether claim 28 of the present application was properly rejected under 35 U.S.C. §112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.
- B. Whether claims 14, 20, 22, 27, 28 and 34 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 5,899,482 issued to Kimura (hereinafter “the Kimura patent”) in view of the U.S. Patent No. 1,582,045 issued to Howe (hereinafter “the Howe patent”) and U.S. Patent No. 4,186,841 issued to Buckley et al. (hereinafter “the Buckley patent”).

VII. ARGUMENT

A. Whether claim 28 of the present was properly rejected under 35 U.S.C. §112, second paragraph, for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The Examiner erroneously rejected claim 28 of the present invention under 35 U.S.C. §112, second paragraph, which states that “[t]he specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Per M.P.E.P. § 2173.02, definiteness of claim language must be analyzed, not in a vacuum, but in light of:

- (A) The content of the particular application disclosure;
- (B) The teachings of the prior art; and
- (C) The claim interpretation that would be given by one possessing the ordinary level of skill in the pertinent art at the time the invention was made.

Further:

In reviewing a claim for compliance with 35 U.S.C. 112, second paragraph, the examiner must consider the claim as a whole to determine whether the claim apprises one of ordinary skill in the art of its scope and, therefore, serves the notice function required by 35 U.S.C. 112, second paragraph.

M.P.E.P. § 2173.02

In rejecting independent claim 28 of the present invention, the Examiner stated that because claim 28 “...recites a ‘locked position’...” with “...no structure associated with said position..., than (*sic*) its (*sic*) unclear how one skilled in the art would know what a locked position is (*sic*).” It should be noted, however, that claim 28 was first introduced into the present application by Amendment on 10 January 2006. Since then, claim 28 has gone through very little changes and had survived four separate Office Actions without

any 35 U.S.C. § 112 rejections until now.

To the extent that claim 28 of the present application does not positively claim a locked position, but merely uses that term to describe the several movements and positioning of the unitary rigid handle, Applicant respectfully disagrees with the Examiner's position that further limiting language must be included to define a locking mechanism. As defined by claim 28 of the present application, the hand-truck of the present invention includes a unitary rigid handle connected to the platform and positionable between several positions. One of these positions is the extended locked position. Further, claim 28 further defines the extended locked position as when the handle is "...substantially perpendicular and fixedly securable to the platform....to prevent pivotal movement of the handle." Claim 28 clearly defines movement and positioning of the positively claimed element of the handle. Such movement and positioning of the handle includes an extended locked position which is defined as when the handle is "...substantially perpendicular and fixedly securable to the platform..." which prevents pivotal movement thereof. Thus, the requirements of 35 U.S.C. § 112, second paragraph, are met because considering claim 28 as a whole and upon taking into account the teachings of the specification, one skilled in the art will be adequately apprised as to what Applicant regards as to the movement and positioning of the unitary rigid handle. Applicant respectfully requests that the Examiner's rejection of claim 28 be reversed.

B. Whether claims 14, 20, 22, 27, 28 and 34 of the present application were properly rejected under 35 U.S.C. §103(a) as being unpatentable over the Kimura patent in view of the Howe patent and the Buckley patent

The Examiner erroneously rejected claims 14, 20, 27, 28 and 34-38 of the present application as being obvious over the Kimura patent in view of the Howe patent and the Buckley patent. 35 U.S.C. § 103(a) is as follows:

A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

35 U.S.C. § 103(a).

Per M.P.E.P. § 2141, the framework for the objective analysis for determining obviousness under 35 U.S.C. 103 is stated in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966). Obviousness is a question of law based on underlying factual inquiries. The factual inquiries, otherwise known as the *Graham* factors, enunciated by the Court are as follows:

- (A) Determining the scope and contents of the prior art;
- (B) Ascertaining the differences between the claimed invention and the prior art; and
- (C) Resolving the level of ordinary skill in the pertinent art; and
- (D) Evaluating evidence of secondary considerations.

“While the sequence of these questions might be reordered in any particular case, the [Graham] factors continue to define the inquiry that controls.” *KSR International Co. v. Teleflex Inc.*, 550 U.S. ___, ___, 82 U.S.P.Q.2d 1385, 1391.

Further, per M.P.E.P. § 2141.02:

In determining the differences between the prior art and the claims, the question under 35 U.S.C. 103 is not whether the differences themselves would have been obvious, but whether the claimed invention as a whole would have been obvious. *Stratoflex, Inc. v. Aeroquip Corp.*, 713 F.2d 1530, 218 USPQ 871 (Fed. Cir. 1983); *Schenck v. Nortron Corp.*, 713 F.2d 782, 218 USPQ 698 (Fed. Cir. 1983)

Even further, M.P.E.P. § 2143 states in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Even more further, M.P.E.P. § 2143.01 states in part:

If proposed modification would render the prior art invention being modified unsatisfactory for its intended purpose, then there is no suggestion or motivation to make the proposed modification. *In re Gordon*, 733 F.2d 900, 221 USPQ 1125 (Fed. Cir. 1984).

Finally, M.P.E.P. § 2143.01 further states:

If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” *In Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.*

Contrasting the Kimura patent (i.e., the primary reference) to the presently claimed invention, an attempt will now be made to describe appropriate portions of the Kimura device as suggested therein. However, as some of those appropriate portions do not contain reference numerals or are not adequately described in Kimura's description, some liberty has been taken in the naming and describing of certain parts. With that in mind, the Kimura patent suggests a traction bar 4 positionable between a locked position and a towing position. Traction bar 4 is pivotally attached between sidewalls by means of a shaft. Terminal ends of the shaft dispose within elongated slots positioned within each sidewall. Each sidewall also includes corresponding notches contained on upper surfaces thereof for receiving terminal ends of a rod attached to the traction bar 4 to lock the traction bar 4 in a vertical position, as illustrated in Figure 5b. More importantly, however, the Kimura patent is mainly directed at and further includes an elaborate steering mode switching mechanism 21 for selectively locking front wheels 2 and rear wheels 3 into a desired direction. The steering mechanism 21 is accommodated within a housing 24 fixedly connected to a base plate 1. A pivotal shaft 10 "...for supporting the rear end of the steering lever 12 is mounted on a rear portion of a lower surface of the housing 24...." (Kimura, Col. 4, Lines 31-33) The steering lever 12 extends forward from the pivotal shaft 10 and includes a switching plate 25a welded to switching bar 25. A front end of the switching bar 25 is coupled to a coupling cam 31, which is fixedly formed on a pivotal shaft of the traction bar 4. (*Id.* at lines 35-41) Further, the housing 24 has on a lower surface thereof a substantially T-shaped guide slot 26, through which a guide protrusion 28b disposes to restrict the movement of steering lever 12. (*Id.* at lines 42-49)

In rejecting each of claims 14, 20, 22, 27, 28 and 34 of the present application, the

Examiner merely indicated that the Kimura patent disclosed a locking plate 12 (presumably as shown in Figure 4), a handle 4 and a tongue to vertically lock the handle to the locking plate (as shown in Figure 5b). The Examiner conceded that the Kimura patent did not disclose a channel, stops or that the tongue member was spaced apart from and downwardly extended from the handle. To overcome these deficiencies, the Examiner apparently cited the Howe patent as disclosing a channel and a handle with stops, and also cited the Buckley patent as disclosing a locking member 109f extending parallel to a wall 109 and locking plate 107. The Examiner further stated that it would have been obvious to one having ordinary skill in the art at the time the invention was made "...to modify the apparatus of Kimura to include a channel and stops, as per the teaching of Howe..." and "...to modify the lock of Kimura to include Buckley's lock for easier removal and locking of a handle."

1. Claim 14

The Examiner improperly attempted to combine the Kimura patent with the Howe patent and the Buckley patent to allege that independent claim 14 was obvious. The Examiner's attempt is improper because such a combination would render the prior art invention being modified unsatisfactory for its intended purpose. The Examiner's attempt is also improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Independent claim 14 defines the present invention as a hand-truck comprising, *inter alia*, a platform having a channel member fixedly attached to an underside thereof.

A locking plate connects to the platform proximate to the channel member. The channel member includes fixedly attached first and second spaced-apart hinge members. A handle is connectable to the platform and includes a unitary rigid member slidably disposable within the channel member between the first and the second spaced-apart hinge members along with a tongue portion spaced-apart from and extending parallel to the rigid member. The handle further includes a stop positioned proximate to a distal end of the rigid member. Upon extracting the handle from the channel member, the stop engages the first and second hinge members and the handle is pivotally positionable between a lowered position and a raised position. The handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member.

a. The Examiner improperly combined the Kimura patent with the Howe patent

The Examiner improperly attempted to combine the Kimura patent with the Howe patent to allege that independent claim 14 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Recalling M.P.E.P. § 2143.01:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as

well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.*

In rejecting claim 14, the Examiner simply stated that the Howe patent discloses a “...channel 17 underneath a platform 10 and stops 19 which allow handtrucks to utilize a handle having an operative position and an inoperative position substantially within the boundaries of the vehicle frame.” However, the Examiner does not state how the channel as disclosed in the Howe patent could be implemented with the carriage of the Kimura patent, or vice versa. As discussed herein, the Kimura patent is primarily directed at and includes an elaborate steering mode switching mechanism 21 which is operatively linked to the front wheels 2 and rear wheels 3. The steering mechanism is also at least partially housed within a housing member 24 fixedly attached to a base plate 1. Pivotal shaft 10 mounts to a rear portion of the housing 24 and supports steering lever 12. Traction bar 4 pivotally attaches to steering lever 12, which is further guided by guide protrusion 28b disposed with slot 26 contained within the housing 24. In short, if the channel member of the Howe patent were to be incorporated into the Kimura patent, the only way traction bar 4 could be slidably disposable within a channel member—as is required by claim 14 of the present invention—would have to mean that the entire steering mechanism 21 of Kimura would be slidably disposable within the channel member as well, or at least slidably positionable with respect to the channel member. Not only does this appear to be a physical impossibility, but would at a minimum require a substantial reconstruction and redesign of the elements shown in the primary reference (i.e., the Kimura patent) as well as a change in the basic principle under which the primary reference construction was designed to operate. Simply put, the channel members as suggested by the Howe patent

could not be incorporated into the design of the Kimura patent without (a) modifying the design of the Kimura patent to the point where the Kimura design would be unsatisfactory for its intended purpose or (b) requiring a substantial reconstruction and redesign of the elements shown in the Kimura patent. As such, the proposed modification or combination of the Kimura patent in view of the Howe patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 14 of the present invention *prima facie* obvious.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 14 be reversed.

b. The Examiner improperly combined the Kimura patent with the Buckley patent

The Examiner improperly attempted to combine the Kimura patent with the Buckley patent to allege that independent claim 14 is obvious. The Examiner's attempt is improper because, upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitation taught or suggested.

Recalling M.P.E.P. § 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In rejecting independent claim 14, the Examiner stated in part that the Buckley patent discloses:

...a locking member (indicated generally as 109f) that extends parallel to a wall 109 and a locking plate 107 connected to a platform 106 such that the locking plate 107 is disposed between a wall 109 and a tongue portion 109f which aids positioning and locking of wall 109.

The Examiner then stated that it "...would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lock of Kimura to include Buckley's **lock** for easier removal and locking of a handle." (Emphasis added) However, per M.P.E.P. § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Independent claim 14 of the present application explicitly states that "...the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member." The tongue portion is spaced-apart from and extends parallel to the rigid member. Nothing else is required in claim 14 to lock the handle to the platform. However, and without acquiescing that the Buckley patent indeed suggests a tongue portion spaced-apart from and extending parallel to a rigid member, engagement of the notch 109f with channel member 107 as suggested by the Buckley patent does not in and of itself lock the sidewall 109. As such, channel 107 does not act as a locking plate. In fact, upon positioning sidewall 109 onto channel 107, notch 109f permits further pivotal movement of the sidewall 109 and does not lock the sidewall. As stated at column 3, lines 22-26:

By using this notch [109f] and side of the channel [107] as a fulcrum, the side wall 109c by means of the handle [109b] can be used to push dense materials such as bags of coins into the pallet and then lock the panel [109] by sliding the handle [109a] into the slot [119f]. (Emphasis added)

Thus, sidewall 109 of the Buckley patent is not locked until handle 109a is positioned to engage with slot 119f. In other words, disposing channel 107 between wall 109 and notch 109f does not lock the wall 109 to the support frame 105, as is required by claim 14, but merely allows for pivotal movement of the wall 109 to push dense materials such as bags of coins *into the pallet* (i.e., sidewall 109 is not used at this point to push the pallet itself). The Buckley patent therefore teaches away from locking the handle to the platform as defined by claim 14 of the present application. Further, in the Office Action the Examiner also stated that "...[a]lthough Buckley discloses locking a wall to a platform, a wall *in an upright position* can just as easily position a platform." (Emphasis added) However, only by positioning the handle 109a to engage slot 119f is the wall 109 locked in the upright position, and these limitations are beyond the scope of claim 14. As such, not only is there no teaching or suggestion to combine the Kimura patent with the Buckley patent, but doing so does not teach or suggest all the claim limitations. Upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested therein. Claim 14 is therefore non-obvious in view thereof.

Furthermore, claim 14 of the present application explicitly defines the present invention as including a tongue portion spaced-apart from and extending parallel to the rigid member. This is simply not suggested or disclosed in the Buckley patent. All that is suggested is a wall containing a notch. The notch is not a portion which is spaced apart from and extending parallel to a rigid member. Upon combining the Kimura patent with the Buckley patent, all the claim limitations are neither taught nor suggested. Because

neither the Kimura patent, the Howe patent nor the Buckley patent, either singularly or in combination, teach each and every element as set forth in claim 14 of the present invention, claim 14 is non-obvious over said combination and believed to be patentable.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 14 be reversed.

2. Claim 20

The Examiner improperly attempted to combine the Kimura patent with the Howe patent and the Buckley patent to allege that independent claim 20 was obvious. The Examiner's attempt is improper because such a combination would render the prior art invention being modified unsatisfactory for its intended purpose. The Examiner's attempt is also improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Independent claim 20 defines the present invention as a material handling system having, *inter alia*, a platform, a handle connected to the platform positionable between a substantially vertical locked position and a stowed position, a channel member fixedly attached to an underside of the platform for receiving the handle while in the stowed position, and a locking mechanism to lock the handle in the locked position. The locking mechanism includes a locking plate and a tongue member spaced apart from the handle. Upon disposing the locking plate between the tongue member and the handle, the handle fixedly secures to the platform in the locked position.

a. The Examiner improperly combined the Kimura patent with the Howe patent

The Examiner improperly attempted to combine the Kimura patent with the Howe patent to allege that independent claim 20 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Recalling M.P.E.P. § 2143.01:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.*

In rejecting claim 20, the Examiner simply stated that the Howe patent discloses a “...channel 17 underneath a platform 10 and stops 19 which allow handtrucks to utilize a handle having an operative position and an inoperative position substantially within the boundaries of the vehicle frame.” However, the Examiner does not state how the channel as disclosed in the Howe patent could be implemented with the carriage of the Kimura patent, or vice versa. As discussed herein, the Kimura patent includes an elaborate steering mode switching mechanism 21 which is operatively linked to the front wheels 2 and rear wheels 3. The steering mechanism is also at least partially housed within a housing member 24 fixedly attached to a base plate 1. Pivotal shaft 10 mounts to a rear

portion of the housing 24 and supports steering lever 12. Traction bar 4 pivotally attaches to steering lever 12, which is further guided by guide protrusion 28b disposed with slot 26 contained within the housing 24. In short, if the channel member of the Howe patent were to be incorporated into the Kimura patent, the only way channel member could receive the traction bar 4—as is required by claim 20 of the present invention—would have to mean that the channel member would also have to receive the entire steering mechanism 21 of Kimura patent. Not only does this appear to be a physical impossibility, but would at a minimum require a substantial reconstruction and redesign of the elements shown in the primary reference (i.e., the Kimura patent) as well as a change in the basic principle under which the primary reference construction was designed to operate. Simply put, the channel members as suggested by the Howe patent could not be incorporated into the design of the Kimura patent without (a) modifying the design of the Kimura patent to the point where the Kimura design would be unsatisfactory for its intended purpose or (b) requiring a substantial reconstruction and redesign of the elements shown in the primary reference. As such, the proposed modification or combination of the Kimura patent in view of the Howe patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 20 of the present invention *prima facie* obvious.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 20 be reversed.

b. The Examiner improperly combined the Kimura patent with the Buckley patent

The Examiner improperly attempted to combine the Kimura patent with the Buckley patent to allege that independent claim 20 is obvious. The Examiner's attempt is improper because, upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested.

Recalling M.P.E.P. § 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In rejecting independent claim 20, the Examiner stated in part that the Buckley patent discloses:

...a locking member (indicated generally as 109f) that extends parallel to a wall 109 and a locking plate 107 connected to a platform 106 such that the locking plate 107 is disposed between a wall 109 and a tongue portion 109f which aids positioning and locking of wall 109.

The Examiner then stated that it "...would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lock of Kimura to include Buckley's **lock** for easier removal and locking of a handle." (Emphasis added) However, per M.P.E.P. § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Independent claim 20 of the present application explicitly states that the handle

fixedly secures to the platform in the locked position upon "...disposing the locking plate between the tongue member and the handle." Nothing else is required to lock the handle to the platform. However, and without acquiescing that the Buckley patent indeed suggests a tongue portion spaced-apart from the handle, engagement of the notch 109f with channel member 107 as suggested by the Buckley patent does not in and of itself lock the wall 109. As such, channel 107 does not act as a locking plate. In fact, upon positioning sidewall 109 onto channel 107, notch 109f permits further pivotal movement of the sidewall 109. As stated at column 3, lines 22-26:

By using this notch [109f] and side of the channel [107] *as a fulcrum*, the side wall 109c by means of the handle [109b] can be used to push dense materials such as bags of coins into the pallet *and then lock the panel* [109] by sliding the handle [109a] into the slot [119f]. (Emphasis added)

Thus, sidewall 109 of the Buckley patent is not locked until a handle 109a is positioned to engage with slot 119f. In other words, disposing channel 107 between wall 109 and notch 109f does not lock the wall 109 to the support frame 105, as is required by claim 20, but merely allows for pivotal movement of the wall 109. During such pivotal movement, positioning of the platform is not permissible because the wall is merely engaged therewith. The Buckley patent therefore teaches away from locking the handle to the platform as defined by claim 20 of the present application. Further, in the Office Action the Examiner also stated that "...[a]lthough Buckley discloses locking a wall to a platform, a wall *in an upright position* can just as easily position a platform." (Emphasis added) However, only by positioning the handle 109a to engage slot 119f is the wall 109 locked in the upright position, and these limitations are not included in claim 14. As such, not only is there no teaching or suggestion to combine the Kimura patent with the Buckley

patent, but doing so does not teach or suggest all the claim limitations. Upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested. Claim 20 is therefore non-obvious in view thereof.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 20 be reversed.

3. Claim 22

The Examiner improperly rejected claim 22 of the present application because neither the Kimura patent, the Howe patent nor the Buckley patent disclose a locking plate attached to the channel member.

M.P.E.P. § 2143 states in part:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

Independent claim 22 further defines the material handling system of claim 20 as having the locking plate attached to the channel member. In contrast to the presently claimed invention, the Howe patent does not suggest a locking plate. Further, in rejecting claim 22, the Examiner stated that the Buckley patent discloses:

...a locking member (indicated generally as 109f) that extends parallel to a wall 109 and a locking plate 107 connected to a platform 106 such that the locking plate 107 is disposed between a wall 109 and a tongue portion 109f which aids positioning and locking of wall 109.

The Examiner then stated that it “...would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lock of Kimura to include Buckley’s **lock** for easier removal and locking of a handle.” (Emphasis added) However, per M.P.E.P. § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

In the Buckley patent, engagement of the notch 109f with channel member 107 does not in and of itself lock the wall 109. As such, channel 107 does not act as a locking plate. In fact, upon positioning sidewall 109 onto channel 107, notch 109f permits further pivotal movement of the sidewall 109. As stated at column 3, lines 22-26:

By using this notch [109f] and side of the channel [107] as a fulcrum, the side wall 109c by means of the handle [109b] can be used to push dense materials such as bags of coins into the pallet and then lock the panel [109] by sliding the handle [109a] into the slot [119f]. (Emphasis added)

Thus, sidewall 109 of the Buckley patent is not locked until a handle 109a is positioned to engage with slot 119f. But this locking action only occurs by the use of the handle 109a, and is not predicated by the channel 107 itself. In other words, disposing channel 107 between wall 109 and notch 109f does not lock the wall 109 to the support frame 105, but merely allows for pivotal movement of the wall 109. During such pivotal movement, positioning of the platform is not permissible because the wall is merely engaged therewith. The Buckley patent therefore does not suggest a locking plate, especially one that is attached to the channel member, and actually teaches away from locking the handle to the platform as defined by claim 20 of the present application.

Further, neither the Buckley patent or the Howe patent teach or suggest a locking plate that is attached to the channel member fixedly attached to an underside of the platform for receiving the handle. As such, not only is there no teaching or suggestion to combine the Kimura patent with the Buckley patent or the Howe patent, but doing so does not teach or suggest all the claim limitations. Upon combining the Kimura patent with the Buckley patent and the Howe patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested. Claim 22 is therefore non-obvious in view thereof.

Because neither the Kimura patent, the Howe patent nor the Buckley patent, either singularly or in combination, teach each and every element as set forth in claim 22 of the present invention, claim 22 is non-obvious over said combination and believed to be patentable. For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 22 be reversed.

4. Claim 27

The Examiner improperly attempted to combine the Kimura patent with the Howe patent and the Buckley patent to allege that independent claim 27 was obvious. The Examiner's attempt is improper because such a combination would render the prior art invention being modified unsatisfactory for its intended purpose. The Examiner's attempt is also improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Independent claim 27 defines the present invention as a hand-truck having, *inter*

alia, a platform having a handle connected thereto positionable between a slidable position, a pivotable position and a locked position. A channel member fixedly attaches to an underside of the platform for receiving the handle while in the stowed position. A tongue member extends from and parallel to the handle such that handle is positionable to place a locking plate connected to the platform between the tongue member and the handle to rigidly lock the handle to the platform.

a. The Examiner improperly combined the Kimura patent with the Howe patent

The Examiner improperly attempted to combine the Kimura patent with the Howe patent to allege that independent claim 27 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Recalling M.P.E.P. § 2143.01:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.*

In rejecting claim 27, the Examiner simply stated that the Howe patent discloses a “...channel 17 underneath a platform 10 and stops 19 which allow handtrucks to utilize a

handle having an operative position and an inoperative position substantially within the boundaries of the vehicle frame.” However, the Examiner does not state how the channel as disclosed in the Howe patent could be implemented with the carriage of the Kimura patent, or vice versa. As discussed herein, the Kimura patent includes an elaborate steering mode switching mechanism 21 which is operatively linked to the front wheels 2 and rear wheels 3. The steering mechanism is also at least partially housed within a housing member 24 fixedly attached to a base plate 1. Pivotal shaft 10 mounts to a rear portion of the housing 24 and supports steering lever 12. Traction bar 4 pivotally attaches to steering lever 12, which is further guided by guide protrusion 28b disposed with slot 26 contained within the housing 24. In short, if the channel member of the Howe patent were to be incorporated into the Kimura patent, the only way traction bar 4 could be slidably disposable within a channel member—as is required by claim 27—would have to mean that the entire steering mechanism 21 of Kimura would be slidably disposable within the channel member as well. Not only does this appear to be a physical impossibility, but would at a minimum require a substantial reconstruction and redesign of the elements shown in the primary reference (i.e., the Kimura patent) as well as a change in the basic principle under which the primary reference construction was designed to operate. Simply put, the channel members as suggested by the Howe patent could not be incorporated into the design of the Kimura patent without (a) modifying the design of the Kimura patent to the point where the Kimura design would be unsatisfactory for its intended purpose or (b) requiring a substantial reconstruction and redesign of the elements shown in the primary reference. As such, the proposed modification or combination of the Kimura patent in view of the Howe patent would change the principle of operation of the prior art invention

being modified, and the teachings of the references are not sufficient to render independent claim 27 of the present invention *prima facie* obvious.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 27 be reversed.

b. The Examiner improperly combined the Kimura patent with the Buckley patent

The Examiner improperly attempted to combine the Kimura patent with the Buckley patent to allege that independent claim 27 is obvious. The Examiner's attempt is improper because, upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested.

Recalling M.P.E.P. § 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In rejecting independent claim 27, the Examiner stated in part that the Buckley patent discloses:

...a locking member (indicated generally as 109f) that extends parallel to a wall 109 and a locking plate 107 connected to a platform 106 such that the locking plate 107 is disposed between a wall 109 and a tongue portion 109f which aids positioning and locking of wall 109.

The Examiner then stated that it "...would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lock of Kimura to include Buckley's **lock** for easier removal and locking of a handle." (Emphasis added) However,

per M.P.E.P. § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Independent claim 27 of the present application explicitly states that the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform. The tongue member extends from and parallel to the handle. Nothing else is required to lock the handle to the platform. However, and without acquiescing that the Buckley patent indeed suggests a tongue portion spaced-apart from the handle, engagement of the notch 109f with channel member 107 as suggested by the Buckley patent does not in and of itself lock the wall 109. As such, channel 107 does not act as a locking plate. In fact, upon positioning sidewall 109 onto channel 107, notch 109f permits further pivotal movement of the sidewall 109. As stated at column 3, lines 22-26:

By using this notch [109f] and side of the channel [107] as a fulcrum, the side wall 109c by means of the handle [109b] can be used to push dense materials such as bags of coins into the pallet and then lock the panel [109] by sliding the handle [109a] into the slot [119f]. (Emphasis added)

Thus, sidewall 109 of the Buckley patent is not locked until a handle 109a is positioned to engage with slot 119f. In other words, disposing channel 107 between wall 109 and notch 109f does not lock the wall 109 to the support frame 105, as is required by claim 14, but merely allows for pivotal movement of the wall 109. During such pivotal movement, positioning of the platform is not permissible because the wall is merely engaged therewith. The Buckley patent therefore teaches away from locking the handle to

the platform as defined by claim 27 of the present application. Further, in the Office Action the Examiner also stated that "...[a]lthough Buckley discloses locking a wall to a platform, a wall *in an upright position* can just as easily position a platform." (Emphasis added) However, only by positioning the handle 109a to engage slot 119f is the wall 109 locked in the upright position, and these limitations are not included in claim 27. As such, not only is there no teaching or suggestion to combine the Kimura patent with the Buckley patent, but doing so does not teach or suggest all the claim limitations. Upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested. Claim 27 is therefore non-obvious in view thereof.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 27 be reversed.

5. Claim 28

The Examiner improperly attempted to combine the Kimura patent with the Howe patent and the Buckley patent to allege that independent claim 28 was obvious. The Examiner's attempt is improper because such a combination would render the prior art invention being modified unsatisfactory for its intended purpose. The Examiner's attempt is also improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Independent claim 28 defines the present invention as a hand-truck having, *inter alia*, a platform having a handle connected to the platform positionable between a slidable

position, a pivotable position and an extended locked position. A channel member fixedly attaches to an underside of the platform for receiving the handle while in the slidable position. First and second spaced apart hinge members are positioned beyond an edge and fixedly connected to the platform.

The Examiner improperly attempted to combine the Kimura patent with the Howe patent to allege that independent claim 20 is obvious. The Examiner's attempt is improper because such a combination would require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate.

Recalling M.P.E.P. § 2143.01:

“If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teachings of the references are not sufficient to render the claims *prima facie* obvious.” In *Re Ratti*, 270 F.2d 810, 123 U.S.P.Q. 349 (CCPA 1959).

In other words, the suggested combination of references can not require a substantial reconstruction and redesign of the elements shown in the primary reference as well as a change in the basic principle under which the primary reference construction was designed to operate. *Id.*

In rejecting claim 20, the Examiner simply stated that the Howe patent discloses a “...channel 17 underneath a platform 10 and stops 19 which allow handtrucks to utilize a handle having an operative position and an inoperative position substantially within the boundaries of the vehicle frame.” However, the Examiner does not state how the channel as disclosed in the Howe patent could be implemented with the carriage of the Kimura patent, or vice versa. As discussed herein, the Kimura patent includes an elaborate

steering mode switching mechanism 21 which is operatively linked to the front wheels 2 and rear wheels 3. The steering mechanism is also at least partially housed within a housing member 24 fixedly attached to a base plate 1. Pivotal shaft 10 mounts to a rear portion of the housing 24 and supports steering lever 12. Traction bar 4 pivotally attaches to steering lever 12, which is further guided by guide protrusion 28b disposed with slot 26 contained within the housing 24. In short, if the channel member of the Howe patent were to be incorporated into the Kimura patent, the only way traction bar 4 could be slidably disposable within a channel member—as is required by claim 28—would have to mean that the entire steering mechanism 21 of Kimura would be slidably disposable within the channel member as well. Not only does this appear to be a physical impossibility, but would at a minimum require a substantial reconstruction and redesign of the elements shown in the primary reference (i.e., the Kimura patent) as well as a change in the basic principle under which the primary reference construction was designed to operate. Simply put, the channel members as suggested by the Howe patent could not be incorporated into the design of the Kimura patent without (a) modifying the design of the Kimura patent to the point where the Kimura design would be unsatisfactory for its intended purpose or (b) requiring a substantial reconstruction and redesign of the elements shown in the primary reference. As such, the proposed modification or combination of the Kimura patent in view of the Howe patent would change the principle of operation of the prior art invention being modified, and the teachings of the references are not sufficient to render independent claim 14 of the present invention *prima facie* obvious.

For the aforementioned reasons, Applicant respectfully requests that the Examiner's rejection of claim 28 be reversed.

6. Claim 34

The Examiner improperly attempted to combine the Kimura patent with the Buckley patent to allege that independent claim 34 is obvious. The Examiner's attempt is improper because, upon combining the Kimura patent with the Buckley patent, there is neither a reasonable expectation of success nor are all the claim limitations taught or suggested.

Recalling M.P.E.P. § 2143:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally the prior art reference (or references when combined) must teach or suggest all the claim limitations.

In rejecting independent claim 34, the Examiner stated in part that the Buckley patent discloses:

...a locking member (indicated generally as 109f) that extends parallel to a wall 109 and a locking plate 107 connected to a platform 106 such that the locking plate 107 is disposed between a wall 109 and a tongue portion 109f which aids positioning and locking of wall 109.

The Examiner then stated that it "...would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the lock of Kimura to include Buckley's **lock** for easier removal and locking of a handle." (Emphasis added) However, per M.P.E.P. § 2141.02, a prior art reference must be considered in its entirety, i.e., as a whole, including portions that would lead away from the claimed invention. *W.L. Gore & Associates, Inc. v. Garlock, Inc.*, 721 F.2d 1540, 220 USPQ 303 (Fed. Cir. 1983), *cert. denied*, 469 U.S. 851 (1984).

Independent claim 34 of the present application explicitly defines the present invention as including a locking plate connected to the platform to fixedly secure the handle to the platform upon engaging a spaced-apart tongue member with the locking plate. Nothing else is required to lock the handle to the platform. However, and without acquiescing that the Buckley patent indeed suggests a tongue portion spaced-apart from the handle, engagement of the notch 109f with channel member 107 as suggested by the Buckley patent does not lock the wall 109. In fact, upon positioning sidewall 109 onto channel 107, notch 109f permits further pivotal movement of the sidewall 109. As stated at column 3, lines 22-26:

By using this notch [109f] and side of the channel [107] as a fulcrum, the side wall 109c by means of the handle [109b] can be used to push dense materials such as bags of coins into the pallet and then lock the panel [109] by sliding the handle [109a] into the slot [119f]. (Emphasis added)

Thus, sidewall 109 of the Buckley patent does not lock upon engaging notch 109f with channel 107, but not until a handle 109a is positioned to engage with slot 119f. The Buckley patent therefore does not teach or suggest a locking plate and tongue member as defined by claim 34, nor is wall 109 “locked” merely upon engaging notch 109f with channel 107. As such, not only is there no teaching or suggestion to combine the Kimura patent with the Buckley patent, but doing so does not teach or suggest all the claim limitations. Claim 34 is therefore non-obvious in view thereof. For the aforementioned reasons, Applicant respectfully requests that the Examiner’s rejection of claim 34 be reversed.

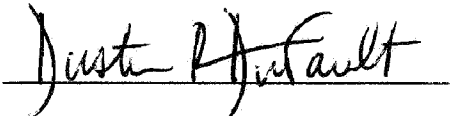
CONCLUSION

Applicant respectfully submits that claims 14, 20, 22, 27, 28 and 34 are allowable over the prior art for each of the aforementioned reasons. Applicant therefore requests reversal of the rejection(s) of claims 14, 20, 22, 27, 28 and 34.

This Amended Brief was submitted with the appropriate fee and it is believed that no additional fee is due in association with the filing of this Appeal Brief. However, the Commissioner is hereby authorized to charge any additional fee required by this paper, or credit any overpayment, to Deposit Account No. 50-3738 of DuFault Law Firm.

Respectfully submitted,
DuFAULT LAW FIRM, P.C.

Date: 27 May 2008

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VIII. CLAIMS APPENDIX

Claims Involved In Appeal:

14. A hand-truck comprising:
- a platform;
 - ground engageable wheels connected to the platform;
 - a channel member fixedly attached to an underside of the platform;
 - a locking plate connected to the platform proximate to the channel member;
 - first and second spaced-apart hinge members fixedly attached to the channel member;
 - a handle connectable to the platform comprising:
 - a unitary rigid member slidably disposable within the channel member and between the first and the second spaced-apart hinge members;
 - a tongue portion spaced-apart from and extending parallel to the rigid member; and
 - a stop positioned proximate to a distal end of the rigid member; and
- whereupon extracting the handle from the channel member, the stop engages the first and second hinge members and the handle is pivotally positionable between a lowered positioned and a raised position, wherein the handle is lockable to the platform by positioning the handle to dispose the locking plate between the tongue portion and the rigid member.

20. A dual-purpose material handling system comprising:
- a platform having a plurality of sides for supporting a load placed thereon;
 - ground engageable wheels attached to the platform;
 - a unitary rigid handle connected to the platform positionable between a substantially vertical locked position and a stowed position;
 - a channel member fixedly attached to an underside of the platform for receiving the handle while in the stowed position;
 - support members extending downward from the platform and positioned parallel to the channel member, wherein the support members and the channel member are positioned to receive a forklift between the channel member and either support member or transversal to the channel member and the support members, thereby allowing the material handling system to be transportable by the forklift from any side without the forklift contacting the handle regardless if the handle is in the locked position or the stowed position; and
 - a locking mechanism to lock the handle in the locked position, the locking mechanism comprising:
 - a locking plate; and
 - a tongue member spaced-apart from the handle, the tongue member and the handle engageable with the locking plate, whereupon disposing the locking plate between the tongue member and the handle, the handle fixedly secures to the platform in the locked position.

22. The material handling system of claim 20 wherein the locking plate attaches to the channel member.

27. A hand-truck for supporting and transporting a load placed thereon, the hand-truck comprising:

- a platform;

- ground engageable wheels connected to the platform;

- a unitary rigid handle connected to the platform, the handle positionable between a slidable position, a pivotable position and a locked position;

- a channel member fixedly attached to an underside of the platform for receiving the handle, wherein the handle slidably disposes within the channel member while in the slidable position;

- a locking plate connected to the platform; and

- a tongue member extending from and parallel to the handle, wherein the handle is positionable to place the locking plate between the tongue member and the handle to rigidly lock the handle to the platform, wherein the handle is accessible at each position to operatively maneuver the hand-truck.

28. A hand-truck for supporting and transporting a load placed thereon, the hand-truck comprising:

- a platform;

- ground engageable wheels connected to the platform;

a unitary rigid handle connected to the platform, the handle positionable between a slidable position, a pivotable position and an extended locked position, the handle substantially perpendicular and fixedly securable to the platform while in the extended locked position to prevent pivotal movement of the handle;

a channel member fixedly attached to an underside of the platform for receiving the handle, wherein the handle slidably disposes within the channel member while in the slidable position;

first and second spaced-apart hinge members positioned beyond an edge and fixedly connected to the platform, the handle slidably disposable between the hinge members; and

first and second stop members attached proximate to a distal end of the handle, whereupon slidably positioning the handle toward the pivotable position, the first stop member engages the first hinge member and the second stop member engages the second hinge member whereby the handle is pivotal about the first and second hinge members.

34. The hand-truck of claim 28 and further comprising:

a locking plate connected to the platform; and

a tongue member spaced-apart from the handle, the tongue member engageable with the locking plate, whereupon engaging the tongue member with the locking plate, the handle fixedly secures to the platform and is in the locked position.

IX. EVIDENCE APPENDIX

There is no evidence submitted with this Amended Appeal Brief.

X. RELATED PROCEEDINGS APPENDIX

There are no known related appeals or interferences that will directly affect or be directly affected by or have a bearing on the Board's decision in this appeal.